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Letter from the Secretary of War, in relation to the bill (H. R. 2298) to restore certain lands in California to homestead and pre-emption settlement

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RESTORATION OF CERTAIN LANDS IN CALIFORNIA TO PRE-EMPTION SETTLEMENT.

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LETTER

FROM

THE SECRETARY OF WAR,

IN RELATION

*To the bill (H. R. 2298) to restore certain lands in California to homestead and pre-emption settlement.*

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APRIL 2, 1874.—Referred to the Committee on the Public Lands and ordered to be printed.

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WAR DEPARTMENT, April 1, 1874.

The Secretary of War has the honor to transmit to the House of Representatives, for the information of the Committee on the Public Lands, in connection with House bill No. 2298, "to restore certain lands in California to homestead and pre-emption settlement," copies of papers relative to certain lands within one mile of Camp Independence, Cal., and the claimants thereto.

WM. W. BELKNAP,  
*Secretary of War.*

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UNITED STATES LAND-OFFICE,  
*Receiver's Office, Independence, Cal., July 9, 1873.*

The following letter was this day received from the United States Land-Office, Washington, D. C.:

WASHINGTON, D. C., June 20, 1873.

GENTLEMEN: Pre-emption cash entry No. 22, made June 12, 1871, at Aurora, Nev., by Josiah Earl, upon W.  $\frac{1}{4}$  of S. W. 6, 13 S., 35 E., and N.  $\frac{1}{4}$  of N. E. 1, 13 S., 34 E., is in conflict with selection No. 5, made by the State of California July 18, 1864, as to W.  $\frac{1}{4}$  6, 13 S., 35 E. Said pre-emption claim is within one mile of the military reservation of Camp Independence. Mr. Earl filed upon said tract November 2, 1865, alleging settlement August 3, 1865.

The proof shows settlement November 2, 1865, and continued residence to date of entry, with improvements valued at \$4,000.

Township 13 S., 35 E., was withdrawn as an Indian reservation from February 14, 1859, to October 7, 1864. The State selection, No. 5, aforesaid was made during said withdrawal, and is therefore illegal.

The reservation for Camp Independence was made by order dated January 23, 1866

## 2 RESTORATION OF LANDS TO PRE-EMPTION SETTLEMENT.

Mr. Earl having made his settlement and filing prior to the establishment of said military reservation, he is entitled to perfect his claim. His entry is therefore approved, subject to appeal.

Very respectfully,

WILLIS DRUMMOND,  
*Commissioner.*

REGISTER AND RECEIVER, *Independence, Cal.*

You will therefore take notice thereof and act accordingly.

J. EARLE, *Receiver.*

P. A. CHAPLANT, *Recorder.*

Hon. W. W. BELKNAP,  
*Secretary of War, Washington, D. C.*

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[First indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, August 13, 1873.*

Respectfully returned to the Secretary of War.

The records show that the post of Camp Independence, Cal., was established July 4, 1862, while Mr. Earl only claims to have settled on his claim August 3, 1865, over three years later.

The military reservation at the post was not declared until January 23, 1866, but the act of March 3, 1853, section 7, reads as follows :

"And no person shall make a settlement or location upon any tract or parcel of lands selected for a military post, or within one mile of such post." (*Vide* General Order No. 65, of 1873, from this office, (copy inclosed,) publishing opinion of the Attorney-General in the Fort Reading case.)

The question seems to be a legal one ; but whether it is of enough importance in a military point of view to warrant interference with Mr. Earl's settlement cannot well be determined without a reference to the department commander.

The post was first garrisoned by three companies (D, G, and I) of the Second California Volunteers. The troops were temporarily withdrawn August 6, 1863, and the post reoccupied in March, 1865, ; and is still occupied by United States troops.

E. D. TOWNSEND, *Adjutant-General.*

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[Second indorsement.]

Respectfully returned to the Adjutant-General for reference to the department commander.

By order of the Secretary of War.

W. T. BARNARD, *A. C. C.*

AUGUST 15, 1873.

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[Third indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
*Washington, August 19, 1873.*

Respectfully referred to the commanding general department of California, for report with reference to first indorsement.

To be returned.

By order of the Secretary of War.

E. D. TOWNSEND, *Adjutant-General.*

[Fourth indorsement.]

HEADQUARTERS DEPARTMENT OF CALIFORNIA,  
*San Francisco, August 29, 1873.*

Respectfully referred to the commanding officer Camp Independence, Cal., for report, with map showing location of Mr. Earl's claim. These papers to be returned with report.

By command of Major-General Schofield.

WILLIAM ENNIS,  
*First Lieutenant Fourth Artillery, A. D. C.*

[Fifth indorsement.]

CAMP INDEPENDENCE, CAL.,  
*September 6, 1873.*

Respectfully returned with all indorsements complied with.

A. B. MACGOWAN,  
*Captain Twelfth United States Infantry, Commanding Post.*

[Inclosures.]

CAMP INDEPENDENCE, CAL.,  
*September 6, 1873.*

SIR: I have the honor to forward the following report through intermediate headquarters, in compliance with indorsement on Josiah Earl's application for a patent to land, dated Independence, Cal., July 9, 1873.

1st. The post of Camp Independence, Inyo County, Cal., was established July 4, 1862.

2d. The troops were temporarily withdrawn August 6, 1863.

3d. The post was re-occupied in March, 1865, and has been continuously garrisoned to date.

4th. The act of March 3, 1853, and the opinion of the Attorney-General of United States, dated Department of Justice, May 24, 1873, as published in General Order No. 65, dated War Department, Adjutant-General's Office, Washington, D. C., June 12, 1873, are as follow:

And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post.—*Act March 3, 1853.*

This would seem to leave no room for controversy, as all settlements and locations by private parties are excluded, not only from what is properly the military post, but from all land from within one mile of it, and that the consent of Congress is necessary to its relinquishment and sale.—*Opinion of the Attorney-General of the United States.*

5th. The military reservation of Camp Independence, also the wood and grass reservation, were declared by the President, January 23, 1866.

6th. Josiah Earl shows settlement on November 2, 1865, eight months after the post was re-occupied by United States troops.

7th. The post has continuously been so garrisoned, and Josiah Earl has also continued to occupy his claim up to this date.

8th. Josiah Earl is only one of fourteen claimants who have occupied land within one mile of the post, many of them for a much longer time than he has.

9th. Josiah Earl is register of the United States land-office at Inde-

pendence, Cal., who, I am credibly informed, offered each of the other claimants to get them their patents if each would pay him \$100 in coin.

10th. The post has been for years surrounded by settlers, and, as far as I can learn, their settlement has not interfered with the good of the service or post; and to all of them it would be a great loss; and to Mrs. Walters, who was the wife of a deceased soldier, it would be a great hardship if she could not get a patent, as it is her only dependence to provide for herself and three children.

11th. I have entered into this explanation more fully because I am aware that the other claimants have applied to the register to get them their patents, which of course would be separately referred to the War Department. Inclosed I send a map with each claimant's land numbered; also a list of claimants numbered to correspond with the map.

12th. If patents are issued to one, all should get them, with the proviso in their patents that the post has prior claim to water; otherwise they may cut off our supply.

I am, sir, very respectfully, your obedient servant,

A. B. MACGOWAN,

*Captain Twelfth United States Infantry, Commanding Post.*

The Hon. SECRETARY OF WAR,  
Washington, D. C.

COUNTY SURVEYOR'S OFFICE,  
*Inyo County, California, September 6, 1873.*

DEAR SIR: I forward to you a map of the country within one mile of Camp Independence taken from the records of this office. No. 1 as shown on the map is the military post.

No. 2. J. Earl, farm improvements valued at.....	\$5,000
No. 3. A. Bell, flour-mill improvements valued at.....	10,000
No. 4. John Martin, farm improvements valued at.....	1,500
No. 5. Joseph Shelton, farm improvements valued at.....	2,000
No. 6. Jacob Vogt, farm improvements valued at.....	2,300
No. 7. L. Gill, farm improvements valued at.....	400
No. 8. S. A. Densmore, farm improvements valued at.....	2,500
No. 9. R. Lewis, farm improvements valued at.....	300
No. 10. Charles Walter, farm improvements valued at.....	3,000
No. 11. E. Charquett, farm improvements valued at.....	4,000
No. 12. W. H. Huff, farm improvements valued at.....	1,000
No. 13. J. Malone, farm improvements valued at.....	2,000
No. 14. J. Broder, farm improvements valued at.....	4,000
No. 15 and 16. J. Broder, farm improvements valued at.....	

I have given the value of the improvements as near as possible; knowing the country as I do, think the value not far from correct.

Yours, respectfully, &c.,

JOSEPH SEELY,  
*Deputy County Surveyor.*

[Sixth indorsement.]

HEADQUARTERS DEPARTMENT OF CALIFORNIA,  
*San Francisco, September 22, 1873.*

Respectfully forwarded to the Adjutant-General of the Army.

As far as can be foreseen now, Camp Independence will not probably be occupied less than three years longer.

In view of the well-known objections to citizens on the frontier establishing themselves in close proximity to a post, I would recommend that no patent for the land in these cases be given until after the post has been abandoned; meantime the claimants will be allowed undisturbed occupation as long as they do not conduct themselves in such a way as to prejudice the interests of the public service.

J. M. SCHOFIELD,  
Major-General Commanding.

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[Seventh indorsement.]

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
Washington, October 6, 1873.

Respectfully returned to the Secretary of War with report from Department of California.

E. D. TOWNSEND,  
Adjutant-General.

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WAR DEPARTMENT,  
Washington City, October 20, 1873.

SIR: The register and receiver of the general land-office at Independence, Cal., have forwarded to me a copy of your letter of June 20, 1873, relative to the claim of Josiah Earl to certain lands located within one mile of Camp Independence, Cal., of which the following is an extract: "Mr. Earl having made his settlement and filing prior to the establishment of said military reservation, he is entitled to perfect his claim. His entry is therefore approved, subject to appeal."

It appears from the records of this Department that the post of Camp Independence, Inyo County, Cal., was established July 4, 1862. The troops were temporarily withdrawn August 6, 1863. It was again re-occupied in March, 1865, and has been continuously garrisoned to date.

It thus appears that the land was occupied as a military post prior to August 3, 1865, the date of the alleged settlement of Mr. Earl; and by the act of March 3, 1853, quoted in the opinion of the Attorney-General of May 24, 1873, (copy inclosed,) "no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post."

In view of these facts I have the honor to appeal from the decision contained in your letter of June 20, 1873.

Very respectfully, your obedient servant,

WM. W. BELKNAP,  
Secretary of War.

The COMMISSIONER OF THE GENERAL LAND-OFFICE.

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DEPARTMENT OF THE INTERIOR,  
GENERAL LAND-OFFICE,  
Washington, D. C., October 22, 1873.

I am in receipt of your letter of the 20th inst., with inclosure, and appealing from the decision of this Office of June 20, last approving

the entry of Josiah Earl, No. 22, for W.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  6, 13 S., 35 E., and N. E.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  1, 13 S., 34 E., subject to appeal within sixty days. In view of the evidence furnished by you of the establishment of the military post of Camp Independence prior to January 23, 1866, this Office has, on review of the case, revoked the decision of June 20 last, and the entry of Mr. Earl is held for cancellation subject to appeal within sixty days. A copy of my letter to the local officers at Independence, Cal., advising them of the fact, is herewith inclosed.

Very respectfully,

WILLIS DRUMMOND,  
*Commissioner.*

HON. WILLIAM. W. BELKNAP,  
*Secretary of War.*

[Inclosure.]

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND-OFFICE,  
Washington, D. C., October 22, 1873.

GENTLEMEN: I have to call your attention to my letter of June 20, 1873, approving, subject to appeal within 60 days, pre-emption entry No. 22, of Josiah Earl, for W.  $\frac{1}{2}$  S. W.  $\frac{1}{4}$  6, 13 S., 35 E., and N.  $\frac{1}{2}$  S. E.  $\frac{1}{4}$  1, 13 S., 34 E., within one mile of Camp Independence, Cal., for the reason that Mr. Earl's settlement was shown to have commenced prior to the establishment of said military post. The above decision was based upon the presumption that the above military reservation was established January 23, 1866, as evidenced by the President's order of that date, and a copy of which was the only data in the possession of this Office at the date of said decision. I am now in receipt of a letter from Hon. W. W. Belknap, Secretary of War, advising this Office that the records of the War Department show that Camp Independence was established as a military post August 4, 1862, occupied in 1865, and continuously garrisoned since. As the land claimed by Mr. Earl is at this time and was at date of his alleged settlement within one mile of such post, he is prohibited by the 7th section of the act of March 3, 1853, from acquiring title thereto. My decision of June 20, 1873, is accordingly revoked, and the entry of Mr. Earl will be held for cancellation, subject to appeal within sixty days.

Notify the parties in interest of this decision, and promptly advise this Office of the condition of the case at the expiration of that time.

Very respectfully,

WILLIS DRUMMOND,  
*Commissioner.*

REGISTER AND RECEIVER, *Independence, Cal.*

SIR: We, the undersigned, Jacob Vagt, James Malone, Joseph Schaltton, John W. Martin, William H. Hoff, Ephraim Chaquette, S. A. Densmore, and George F. L. Quelet, occupants of farming lands in the vicinity of Camp Independence, Cal., have the honor to submit the following statement:

1st. That we are all pre-emptors of our respective farms in the neighborhood of your post except Joseph Schaltton, whose claim is a homestead.



2d. That we have all submitted proofs of residence to the proper register, except the said Joseph Schalten as to his homestead, and E. Chaquette as to the land of Warren S. Mathews, and that on said land Warren S. Mathews proved up, paid, and obtained a like certificate of payment.

3d. That John W. Martin, William H. Huff, Warren S. Mathews, and E. Chaquette presented proofs of residence to the proper register which were accepted, and that they then paid to said register the regularly authorized sum, and received the proper certificate therefor.

4th. That S. A. Densmore, Jacob Vagt, and James Malone offered proofs of residence and tendered payment to the register, but that the money was refused on the ground of their land lying within one mile of a military post.

5th. That our farms are within a mile of the military post of Camp Independence, and that, as we are informed, we cannot obtain patents therefor unless an act of Congress be passed granting us relief.

We have, therefore, made affidavit to the facts of settlement, purchase, and improvement, and would feel under many obligations if you will inquire into the facts therein contained and forward these papers to the War Department with an indorsement stating your opinion of their correctness, and as to whether it will prejudice the Government to give us title, with such other recommendation as may assist us in obtaining patents. Our object is simply that these papers, with your opinion and recommendation, may be filed in the War Department until called for by the proper congressional authority.

Hoping that we are not asking you to do anything that will conflict with your duty as post commander, and regretting the trouble we give you,

We have the honor to remain your obedient servants,  
 JOSEPH SCHALTEN.  
 JAMES MALONE.  
 EPHRAIM CHAQUETTE.  
 GEORGE F. L. QUELET.  
 S. A. DENSMORE.  
 JACOB VAGT.  
 JOHN W. MARTIN.  
 WILLIAM H. HUFF.

Capt. ALEXANDER B. MACGOWAN,  
*Twelfth United States Infantry,  
 Commanding Camp Independence, Cal.*

The undersigned, Joseph Schalten, a citizen of the United States and of Inyo County, State of California, over the age of twenty-one years, being duly sworn, deposes and says:

1st. That he served in the regular and volunteer service of the United States for over nine years, and was honorably discharged from the same by expiration of service.

2d. That he is now the occupant of lots numbers five and six on the fractional northwest quarter of section six, in township number thirteen south, of range number thirty-five east, base and meridian of Mount Diablo, containing one hundred and sixty acres of land.

3d. That he settled on the above piece of land the 10th day of September, A. D. 1868, and filed an application for a homestead thereon March 31, A. D. 1871, with the register of the Nevada land-office, and



supposed he had thereby secured a possessory title under the homestead laws of the United States.

4th. That his land is within one mile of the military post of Camp Independence, Cal., which fact he learns is an impediment to his continued occupancy and to his obtaining a patent from the United States unless he can obtain congressional relief. That the said quarter-section has been used and occupied by farmers continuously for the last eleven years.

5th. That he has continuously occupied and farmed the same from that time, and is still occupying and raising crops on the same, and has fenced and improved it, and erected a dwelling and out-houses, planted fruit and shade trees, and made irrigating ditches upon it, and that he has sixty acres under cultivation in corn and barley and the remainder in hay.

6th. That his improvements have cost him \$2,000 in gold coin.

7th. That his farm constitutes his only property, and that he and his wife and children are mainly dependent on it for their support.

JOSEPH SCHALTEN.

Subscribed and sworn to before me this 7th day of October, A. D. 1873.

[SEAL.]

PATRICK REDDY,

*Notary Public, Inyo County, California.*

The undersigned, James Malone, a citizen of the United States and of the county of Inyo, and over twenty-one years of age, being duly sworn, deposes and says:

1st. That he served in the Army of the United States from the year 1859 until the 27th July, 1870, and was honorably discharged for expiration of service; during his term of service in the Army he and his wife had saved the sum of \$1,200, which he invested in the purchase of the land hereinafter mentioned.

2d. That he is the occupant of the southeast quarter of section number six, township number thirteen south, of range thirty-five east, base and meridian of Mount Diablo, containing one hundred and sixty acres of land.

3d. That he purchased the possession of said land and improvements from Thomas Mahoney in the month of June, A. D. 1869, and paid him therefor the sum of \$1,200 United States gold coin.

4th. That on the sixth day of May, A. D. 1872, he filed a declaratory statement with the register of the Aurora, Nev., land-office, receiving the proper certificate of filing, and supposed that he had thus obtained a possessory title to the same under the pre-emption laws of the United States.

5th. That on the twelfth day of March, A. D. 1873, he submitted proofs of residence to the said register, and tendered payment thereon, but that said payment was refused on account of his being within one mile of Camp Independence, Cal.

6th. That part of said land is within one mile of the military post of Camp Independence, Cal., which he learns is an impediment to his continued occupancy or to his obtaining a patent from the United States unless he can obtain congressional relief.

7th. That the above quarter-section has been used and occupied by farmers for the last nine years. That he has continuously occupied and

farmed the said land from the time of his entry, and still occupies and farms it. That he has fenced and improved said land, and has thereon one dwelling-house, one barn, grape-vines, trees; has 30 acres in barley and corn and ten acres in vegetables; also farming and agricultural implements, which cost in all upwards of \$2,700 gold coin.

That he is entirely dependent on said farm for his own support and that of his wife and four infant children.

JAMES MALON.

Subscribed and sworn to before me this 11th day of October, A. D. 1873.

[SEAL.]

PATRICK REDDY,  
*Notary Public, Inyo County, California.*

The undersigned, Ephraim Claquette, a citizen of the United States and a resident of Inyo County, California, and over the age of twenty-one years, being duly sworn, deposes and says:

That about the month of July, A. D. 1862, Warren Mathews, a citizen of the United States and a resident of Inyo County, settled on the southeast quarter of southwest quarter and east half of lot 1 in fractional northwest quarter, and west half of lot number 1 in fractional northeast quarter of section six, township thirteen south, of range thirty-five east, base and meridian Mount Diablo, containing one hundred and sixty acres of land.

That on the fourteenth day of January, A. D. 1865, said Warren Mathews filed a declaratory statement in the Visalia land-office, and obtained a certificate of said filing in proper form.

That on the twenty-seventh day of February, A. D. 1870, said Mathews submitted his proofs of residence on the same to said register; that they were approved; that said Mathews paid to the receiver the sum of \$200 and fees as payment for said land, and received a proper certificate of payment.

That said Mathews sold said land and improvements to said affiant for the sum of thirty-five hundred dollars gold coin, both parties to the sale supposing that Mathews was the full and complete owner of said land in good faith as having occupied and proved up upon and bought his title to the same. That said land is within a mile of the military post of Camp Independence, which he (Chaquette) learns is an impediment to his holding said land or obtaining a patent from the United States unless he can receive congressional relief.

That said land has been continuously farmed by said Mathews and by him, E. Chaquette, for the period of 11 years; that he still farms it and is entirely dependent on it and on his adjoining pre-emption lot for the support of himself, his wife, and children.

That he has on said land one dwelling-house, one out-house and blacksmith shop, one and a half miles of live fence, half a mile of rail-fence, besides agricultural and farming implements, and 70 acres in corn, vegetables, and barley.

That the above improvements cost him and the party from whom he purchased the sum of \$4,000.

EPHRAIM CHAQUETTE.

Subscribed and sworn to before me this 27th day of October, A. D. 1873.

M. W. HAMMARSTRAND,  
*County Clerk Inyo County, California.*

The undersigned, George Quelet, a citizen of the United States and of Inyo County, California, and over the age of twenty-one years, being duly sworn, deposes and says:

That he is now the occupant of the west one-half of lots numbers one and two in the fractional northwest quarter of section number five, and the east half of lot number one, in the fractional northeast quarter of section number six, of township number thirteen south, of range thirty-five east, base and meridian Mount Diablo, containing one hundred and twenty acres of land.

That he settled on this land on the first day of August, A. D. 1873, and filed his declaratory statement in the land-office at Independence, Cal., on the twenty-seventh day of October, A. D. 1873.

That his land lies within one mile of the military post of Camp Independence, Cal., and that he cannot obtain United States patent to the same for that reason without congressional relief.

That he has on this land a dwelling-house, one and one-half miles of live fence, one and one-half miles of timber fence, irrigating ditches, farming and agricultural implements, fifty acres in corn, costing upward of \$3,000 in United States gold coin.

That he relies entirely upon this ranch and his labor for his support.

GEORGE F. L. QUELET.

Subscribed and sworn to before me this 27th day of October, A. D. 1873.

M. W. HAMMARSTRAND,  
*County Clerk Inyo County, California.*

The undersigned, S. A. Dinsmore, a citizen of the United States and of the county of Inyo, State of California, and over the age of twenty-one years, being duly sworn, deposes and says:

That he was a soldier in the service of the United States during the war, and was honorably discharged for expiration of service.

That he is now the occupant of lots numbers three and four in fill of northeast quarter of section number six, township number thirteen south, of range thirty-five east, base and meridian Mount Diablo, containing one hundred and sixty acres.

That said land was originally settled by one Perkins in 1861.

That he purchased possession of the same from said Perkins in June, 1866, and has occupied and farmed continuously ever since.

That he filed his claim for pre-emption March 19, 1873, in the Aurora land-office, Nevada, and received a certificate therefor in due form from the register.

That he tendered proofs of residence to the register of said office in the month of March, A. D. 1873, with \$200 as payment and fees, but that payment was refused on the ground of part of this land being within one mile of a military post.

That the part of his land which contains his improvements lies within one mile of the military post of Camp Independence, Cal., which he learns is an impediment to his obtaining a patent from the United States unless he can obtain congressional relief.

That his improvements cost him the sum of \$3,000, gold coin, and consist of a dwelling-house and out-houses, two and one-half miles of timber fences, irrigating ditches, sixty acres in wheat and barley, two thousand fruit and shade trees, and eight hundred vines.

That he relies mainly on this farm for the support of himself, his wife, and children.

S. A. DENSMORE.

Subscribed and sworn to before me this 1st day of November, A. D. 1873.

M. W. HAMMARSTRAND,  
*County Clerk Inyo County, California.*

The undersigned, Jacob Vagt, a citizen of the United States and of Inyo County, California, and over the age of twenty-one years, being duly sworn, deposes and says:

1st. That he is now the occupant of lots numbers, three and four in fractional northwest quarter of section number six, township number thirteen south, of range thirty-five east, base and meridian of Mount Diablo, containing one hundred and sixty acres of land.

2d. That at the time of settling on said land, viz: on the 3d day of January, A. D. 1865, he filed a declaratory statement in the land-office in the Visalia land-district, obtained the requisite certificate of filing, and supposed that he had thereby acquired a possessory title under the pre-emption laws of the United States.

3d. That on the 12th day of March, A. D. 1873, he submitted his proofs of residence to the said register, and tendered payment of \$200, but such payment was refused on the ground that the land was within one mile of a military post.

4th. That the said land is within one mile of the military post of Camp Independence, Cal., which he learns is an impediment to his continued occupancy and to his obtaining a patent from the United States unless he can obtain congressional relief.

5th. That he has continuously occupied and farmed the said land since his entry upon it, and still occupies and farms it; that he has four miles of fence on said land; has dug irrigating ditches, planted 130 shade-trees, 24 fruit-trees, 2,300 grape-vines; has 10 acres in alfalfa, 80 acres in barley, one dwelling-house, one out-house, farming and agricultural implements.

That the above improvements have cost him \$5,000, gold coin.

That he is entirely dependent on the said farm for his support and that of his wife.

That on the 14th day of June, A. D. 1873, fearing that the refusal to receive the money would cause him to lose his land, as the time for proving up on pre-emption claims had arrived, he abandoned his pre-emption claim and filed a homestead on the same land, and still holds it by that title.

JACOB VAGT.

Subscribed and sworn to before me this 3d day of November, A. D. 1873.

M. W. HAMMARSTRAND,  
*County Clerk Inyo County, Cal.*

The undersigned, John W. Martin, a citizen of the United States and of Inyo County, State of California, over the age of twenty-one years, being duly sworn, deposes and says:

## 12 RESTORATION OF LANDS TO PRE-EMPTION SETTLEMENT.

1st. That he served one year in the volunteer service of the United States, and was honorably discharged from the same by expiration of service.

2d. That he is now the occupant of the east half of lots number two, three, four, and five, in fill of northeast quarter of section number one, in township number thirteen south, of range number thirty-four east, containing one hundred and sixty acres.

3d. That he settled on said quarter-section on the first day of September, A. D. 1865, and on the eighteenth day of March, A. D. 1867, filed his declaratory statement with the register of the Visalia land-office, and obtained from him a certificate of said filing, and that he supposed he had thus obtained a possessory right to the said land under the pre-emption laws of the United States.

4th. That on the first day of November, A. D. 1871, he submitted his proofs of residence on the same to the register at Aurora, Nev.; that these were approved; that he paid to the said register the sum of \$200 and fees as payment for said land, and received a proper certificate of payment.

5th. That his land is within one mile of the military post of Camp Independence, Cal., which fact he learns is an impediment to his continued occupancy and to his obtaining a patent from the United States unless he can obtain congressional relief.

6th. That the said quarter-section has been used and occupied by him continuously as a farm for the last eight years, and that he still occupies and farms it.

7th. That he has improved and fenced the said quarter-section; has erected two dwelling-houses thereon; that he has planted thereon a number of trees bearing fruit, and a vineyard, a number of shade-trees, also a nursery of locust-trees; that he has constructed irrigating ditches, and has two acres in alfalfa and sixty-two acres in barley and corn.

8th. That his improvements have cost him \$2,700 in gold coin.

9th. That he is mainly dependent on this farm for the support of himself and his wife and his children.

JOHN W. MARTIN.

Subscribed and sworn to before me this 16th day of September, A. D. 1873.

[SEAL.]

PATRICK REDDY,  
*Notary Public, Inyo County, California.*

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The undersigned, William H. Huff, citizen of the United States and of Inyo County, California, and over the age of twenty-one years, being duly sworn, deposes and says:

1st. That he is now the occupant of the southwest quarter of section 5, township No. 13 south, of range 35 east, base and meridian of Mount Diablo, containing 160 acres of land.

2d. That at the time of settling on said quarter-section he filed a declaratory statement in the Nevada land-office, and obtained a certificate of filing from Wilson Butler, the register, and supposed that he had thus obtained a possessory title under the pre-emption laws of the United States.

3d. That on the 13th day of March, A. D. 1873, he submitted his proofs of residence on the same to the said register; that they were ap-

proved ; that he paid to the receiver the sum of \$200 and fees as payment for said land, and received a proper certificate of payment.

4th. That part of his land is within one mile of the military post of Camp Independence, Cal., which he learns is an impediment to his continued occupancy or to his obtaining a patent from the United States unless he can obtain congressional relief.

5th. That the said quarter-section has been used and occupied by farmers continuously for the last seven years.

6th. That he purchased the occupancy of the same, January 7, 1871, from Richard Parker, a farmer, and paid him \$250, gold coin, for the same.

7th. That he has continuously occupied and farmed the same from that time, and is still occupying and raising crops on the same, and has fenced and improved the same, and erected a dwelling upon it, and that he has thereon shade-trees and artificial ditches for irrigation, and raises every year a crop of corn, a crop of hay, and vegetables for the use of his family.

8th. That his improvements cost him, gold coin, \$1,500.

9th. That he is mainly dependent on this farm for the support of himself and family.

WM. H. HUFF.

Subscribed and sworn to before me this 5th day of November, A. D. 1873.

[SEAL.]

M. W. HAMMARSTRAND,  
County Clerk Inyo County, Cal.

CAMP INDEPENDENCE, INYO COUNTY, CAL.,  
November 26, 1873.

SIR: I have the honor in forwarding these applications to make the following report:

1st. Troops were first sent here in March, 1862, to protect some quartz-mines and miners from hostile Indians.

2d. The post was established on July 4, 1862.

3d. Troops were temporarily withdrawn August 6, 1863.

4th. The post was re-occupied in March, 1865, and so continues to this date.

5th. This military reservation was declared by the President January 23, 1866.

6th. The act of March 3, 1853, and the opinion of the Attorney-General of the United States, dated Department of Justice, May 24, 1873, as published in General Orders No. 65, dated War Department, Adjutant General's Office, Washington, June 12, 1873, are as follow:

"And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post." (Act of March 3, 1853.) "This would seem to leave no room for controversy, as all settlements and locations by private parties are excluded not only from what is properly the military post, but from all land within one mile of it, and that the consent of Congress is necessary to its relinquishment and sale." (Opinion of Attorney-General of the United States.)

7th. The post has been surrounded with settlers almost from its first establishment, and from all I can learn they have never interfered with



# 14 RESTORATION OF LANDS TO PRE-EMPTION SETTLEMENT.

the good of the service or post, and, in my opinion, they would be much better neighbors as owners than as squatters on the land.

8th. Four of the applicants are discharged soldiers, viz, Joseph Schalten, James Malone, S. A. Densmore, and John W. Martin. The other four applicants are quiet and good men.

9th. Inclosed is a map showing post and each of these claims.

10th. If patents be given for these lands claimed, a proviso should be inserted in their patents, "*that the post has prior claim to all the water flowing in the north branch of Oak Creek;*" otherwise they might cut off our supply.

I am, very respectfully, your obedient servant,

ALEX. B. MACGOWAN,

*Captain Twelfth United States Infantry, Commanding Post.*

The SECRETARY OF WAR,

(Through intermediate headquarters.)

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[Indorsements.]

HEADQUARTERS CAMP INDEPENDENCE, CAL.,

*November 26, 1873.*

Respectfully forwarded. My report and opinion is written on previous page.

A. B. MACGOWAN,

*Captain Twelfth Infantry, Commanding Post.*

HEADQUARTERS DEPARTMENT OF CALIFORNIA,

*San Francisco, December 4, 1873.*

Respectfully forwarded to the Adjutant-General of the Army.

In view of the well-known objections to citizens establishing themselves in close proximity to a post, I would recommend that no patent for the land in these cases be given until after the post has been abandoned; meantime the claimants will be allowed undisturbed occupation as long as they do not conduct themselves in such a way as to prejudice the interests of the public service.

J. M. SCHOFIELD,

*Major-General Commanding.*

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,

*Washington, March 28, 1874.*

Official copies :

E. D. TOWNSEND,

*Adjutant-General.*

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